

State v. Joseph McEnroe

ADVANCE ORAL INSTRUCTION

I am Judge Jeff Ramsdell, the trial judge in this case. Each of you has been summoned here as a potential juror in the case of State of Washington versus Joseph T. McEnroe. Today I will provide you with a brief description of the case, the procedures to be followed during jury selection, and some instructions governing your conduct throughout the jury selection process and the trial.

We are currently assembled in the Presiding Judge's courtroom in order to accommodate the size of this prospective jury panel. We have two goals to accomplish with you today. The first is to have each of you complete a questionnaire and the second is to inform you of your obligations as prospective jurors in this matter. The completion of these questionnaires will substantially shorten the jury selection process. The questionnaires will be handed out in a few minutes and I will give you some additional instructions at that time.

However, before we go any further, I need to swear you all in as potential jurors. Will all the jurors please rise and raise your right hand to be sworn:

Do each of you swear or affirm that you will give truthful answers to all questions that may be asked of you by the court or the attorneys touching upon your qualifications to act as jurors in this case, and that you will follow all instructions given to you by or under the direction of the court? If so, please say I do.

The remarks that I make, the questions that may be asked of you, and the instructions I give you, are directed to the attention of every juror in the courtroom. Each of you should give your full attention to these proceedings today.

This is a criminal case initiated by the State of Washington against the defendant, Joseph T. McEnroe. The State is represented by King County deputy prosecuting attorneys Scott O'Toole and Michelle Morales. Could both of you please stand and introduce yourselves to the prospective jurors?

The defendant, Mr. McEnroe, is present and represented by his attorneys, Katie Ross, William Prestia and Leo Hammaji. Counsel, could you also please stand and introduce yourselves and your client?

Mr. McEnroe is charged by way of information in Counts I, II, III, IV, V, and VI with the crimes of Aggravated Murder in the First Degree. It is alleged in Counts I-VI that on or about December 24, 2007, the defendant, with premeditated intent, caused the deaths of Wayne S. Anderson, Judith Anderson, Scott Anderson, Erika Anderson, Olivia Anderson and Nathan Anderson in King County, Washington.

The State has further alleged in Counts I-VI that the murders of the six victims were committed as part of a common scheme or plan or the result of a single act of the defendant. In Counts IV, V and VI, the State also alleges that those murders were committed to conceal the commission of the crime or to protect or conceal the identity of any person committing a crime. These further

allegations are called aggravating circumstances under the laws of the State of Washington.

To each of these charges, the defendant has entered pleas of not guilty. These pleas of not guilty mean that you, the jury, must decide whether the State has proven every element of each crime charged. The State has the burden of proving every element beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists. The defendant has no duty to call witnesses, produce evidence, or testify.

As most of you probably already know, a defendant is presumed innocent. The presumption of innocence continues throughout the entire trial. The presumption means that you must find the defendant not guilty unless you conclude at the end of your deliberations that the evidence has established the defendant's guilt beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists, and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, then you are satisfied beyond a reasonable doubt.

This case was initiated by the King County Prosecuting Attorney by the filing of a document called an Information, informing the defendant of the charges. You are not to consider the filing of the Information or its contents alone as proof of the matters charged therein.

In addition to the Information, which advises the defendant of the charges, the King County Prosecutor has also filed a special notice of intent. The notice advises the defendant that if he is convicted of any of the crimes of premeditated first degree murder with an aggravating circumstance, as charged in Counts I-VI, the jury will be asked to determine whether or not the death penalty should be imposed.

The laws of the State of Washington establish a two phase procedure for determining whether or not the death penalty should be imposed. In the first phase you must decide whether the prosecution has proven beyond a reasonable doubt any or all of the charges of premeditated first degree murder with an aggravating circumstance as alleged in Counts I-VI.

If the defendant is found not guilty of premeditated first degree murder with an aggravating circumstance on all six counts during the first phase, or if he is found guilty of a lesser-included crime on all six counts, your jury service on this case will be completed.

However, if you find the defendant guilty of the crime of premeditated first degree murder with an aggravating circumstance on any of Counts I-VI, then you will be reconvened for a second phase of the trial called a sentencing phase.

During the sentencing phase portion of the trial, you may hear additional evidence and you will hear argument concerning the penalty to be imposed. You will then retire to the jury room to determine whether the death penalty should be imposed or whether the punishment should be life in prison without the possibility

of release or parole. In making this determination, you will be asked the following question:

Having in mind the crime or crimes of which the defendant has been found guilty, are you convinced beyond a reasonable doubt that there are not sufficient mitigating circumstances to merit leniency?

A mitigating circumstance may be any relevant fact about the defendant or the crime or crimes that suggests to you a reason for imposing a sentence other than death. Mitigating circumstances will be defined more specifically at a later point. If you find that the State has not proven beyond a reasonable doubt the absence of sufficient mitigating circumstances, the punishment will be life in prison without possibility of release or parole.

On the other hand, if you find that the State has met its burden of proof, the penalty will be death. In order to find that the State has met its burden of proof concerning the absence of sufficient mitigating circumstances, you must be unanimous. If you are not unanimous, the defendant will not be sentenced to death, but will receive a sentence of life in prison without possibility of release or parole.

Because you may become a juror in this case and possibly be required to participate in the sentencing phase determination involving the question of the death penalty, each of you can expect to be individually questioned on a future date about your views, if any, about the death penalty and the extent to which these views might influence your decisions in this case.

As I told you earlier, in a few minutes you will be given a questionnaire to complete. The questionnaire is designed to have you tell the court and the lawyers about yourself and about your views on a variety of issues.

In order that the case is tried before a fair and impartial jury, the lawyers and I will ask you questions both through this written questionnaire today and at a later date by individual and group questioning. The questions we ask are not intended to embarrass you or to pry unnecessarily into your privacy, but are to help determine if you are unbiased and without preconceived ideas which might affect your ability to be a fair and impartial juror in this case. You should be straightforward in your answers rather than answering in the way you feel the lawyers or I might expect you to answer. Likewise, you should not withhold any information in order to be seated, or avoid being seated, on this particular jury.

It is presumed that when a jury has been selected and accepted by both sides, that each of the jurors selected will keep an open mind until the case is finally submitted to them for deliberations, that each juror will accept and follow the instructions of the court, and each juror will base any decision upon the law and the facts uninfluenced by any other considerations. The purpose of the questions we ask during the jury selection process is to determine if you have that frame of mind.

The questionnaire will ask you about any information you may have heard about this case before you came here today and how that information might

influence you. You will also be asked your views about the death penalty and the extent to which these views might influence your decisions in this case.

The questionnaire also asks you if serving on this case would be an undue hardship for you. Some of you previously requested a hardship exemption that was denied. Others of you may have had circumstances arise since you initially responded to your summons that may now create an undue hardship for you to serve on this jury. This is your opportunity to explain in detail why you believe an exemption may be appropriate in your situation.

We plan to have a jury selected for this case before the December holidays. We will start the trial in the beginning of January. We anticipate that the trial will last approximately four to five months once it begins. Jurors are required to be in court every Monday through Thursday from 8:30 to 4:00 during the trial itself. Jurors are not required on Fridays until deliberations begin. On Fridays during the trial, therefore, you would be free to attend to your normal daily activities.

When filling out the questionnaire, please keep in mind that when the term “undue hardship” is used, it means more than mere inconvenience; it means circumstances that would create a serious burden on you to serve on this jury. Also, please pay particular attention to Question 82 regarding the legal qualifications to serve on the jury.

After you have completed the questionnaire, you will turn the questionnaire in to one of the bailiffs in the back of the courtroom. Your juror number will

determine which bailiff will accept your completed questionnaire. Signs on the boxes next to each of the bailiffs will tell you where to take your questionnaire. Please hand your questionnaire to the appropriate bailiff. The bailiff has been instructed to review your questionnaire to make sure it is complete. Once the bailiff determines that the questionnaire is complete, the bailiff will release you for the day.

You may not leave the room until the questionnaire has been completed and accepted by the bailiff. Once you are released, you are free to return to your job or your other normal daily activities until your day to report for individual questioning.

Next week the Court will make decisions on additional requests for excusal, and will begin scheduling dates for you to return to Court for individual questioning. Starting on Saturday, September 27, you must check the website provided on both your yellow juror number sheet and the gold information sheet. The website will contain a list of all jurors by the number assigned in court today. The list on that website will tell each of you whether you have been excused from further service in this matter or are ordered to return for individual questioning.

Individual questioning will be conducted in groups of 10 prospective jurors beginning on Monday, October 6th, and continuing Mondays through Thursdays from 8:30 am to 4:30 pm until all the jurors have been individually questioned. The list on the website will tell you the date when you are required to return for

individual questioning if you have not been excused. The list will also tell you whether you should report in the morning or afternoon on that date.

If you are required to appear for individual questioning, you will be reminded to check the same website again on the day after your individual questioning. The list on the website will be updated to reflect whether you have been excused from further service after your individual questioning. If you are not excused after individual questioning, the list will tell you when you must report for a full day of group questioning with the other jurors.

Again, the website will tell you the date, time, and room number where you will be ordered to appear for group questioning. If you are not excused after individual questioning, then you are free to return to your job or normal daily schedule until your day to report back for group questioning. Group questioning will be scheduled for an entire day.

The yellow number sheet you have received today, and the gold information sheet, provide the website address for the list you must check. That website also contains the information I have just given you orally. Please do not lose these instructional materials. Take them home with you today and keep them in a safe and accessible place.

Finally, during jury selection and throughout this entire proceeding, there are some very important instructions that you must follow. These instructions apply to your conduct now and throughout the entire proceedings. Until the case is submitted to you for your deliberation, you must not discuss the case with each

other or anyone else or remain within hearing of anyone discussing anything about this case. This includes your family members, friends, co-workers, spiritual advisors or therapists. You must not discuss anything about the case, including the questions asked of you during the jury selection process, or any other matter that has anything to do with this case.

It is important to the concept of a fair trial that all matters having to do with this case come to you only in court. It is also important that you keep your mind free of outside influences. A violation of the Court's order in any way is very serious. It could involve a personal penalty for you, and cause this entire jury selection process to have to be repeated.

There has been and will be media coverage on this case. You are ordered not to read, view, or listen to any report in the newspaper, radio, television or on the Internet concerning coverage of this case or anything related to it.

Do not allow anyone to make any comments to you about any media coverage on this case. You may not ask anyone about any media coverage on this case. Likewise, do not research this case on your own. The case must be decided solely on the evidence produced in the courtroom. You must not attempt to seek out evidence on your own.

For the same reason, jurors should not inspect the scene of any event involved in the case. Conditions may not be the same. If your normal coming and going from court sessions would result in passing or seeing the scene of an event involved in the case, do not stop and investigate.

Do not attempt to determine what the law is on your own by reading about or by researching the law in any manner. The applicable law governing your deliberations will be provided by the court at the appropriate time.

While you are in the courtroom you must turn off your cell phones, tablets, notebook computers, and all other electronic devices. Please turn them off now if you have not already done so.

The bailiffs will now distribute to you the questionnaire. Please use the pen you were provided when you checked in this morning. You may find it helpful to read the Juror Information Sheet again before you start filling out the questionnaire. If you have a question about the questionnaire, please do not ask your fellow jurors for help. Simply reread the questionnaire and answer each question to the best of your ability.

When you have completed the questionnaire, please turn in the questionnaire and the pen to the appropriate bailiff in the back of the courtroom for review. Once your questionnaire is reviewed as complete, the bailiff will release you for the rest of the day.

Again, retain the gold information sheet and your yellow juror number sheet for future reference and assistance with the website. Beginning on Saturday, September 27, each of you must check the list on the website to determine your future obligations in this matter.

Court will now be in recess to allow you to read your handouts and complete your questionnaire. Please turn in your questionnaire to the bailiff as soon as you have completed it.

Thank you for your patience and attention.